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AN interesting article by Professor Gray on "Cases and Treatises," in the September–October number of the "American Law Review,"[1] written partly in answer to Mr. Bishop's address on "The Common Law as a System of Reasoning," recently published in that magazine, discusses, among other things, the comparative value of adjudged cases and text-books as instruments of legal education, and corrects several misunderstandings as to the method of instruction in the Harvard Law School.

After premising that the "case system" requires a certain amount of intelligence in teacher and student, and a certain amount of time for its satisfactory employment, — probably two years, at least, — Mr. Gray continues: —

"Most of the criticism that has been raised by the study of cases in the Harvard Law School has been really aimed at the subjects which have been selected for study," with "this unfortunate result, that the method has shared in a disapproval, whose only real object was the choice of subjects for the application of the method.

"One other misunderstanding has arisen from a mere verbal similarity. 'I do not believe in case lawyers,' it has been said to me more than once, as if that were a knock-down argument against the method of study by cases. By a 'case lawyer,' I suppose, is generally meant a lawyer who has a great memory for the particular circumstances of cases, but who is unable to extract the underlying principles. But the 'case system' has no tendency to produce lawyers of that type. It makes no effort and offers no inducement for the student to charge his memory with the names or the facts of particular cases. It uses the case merely as material from which the student may learn to extract the underlying principles.

"I have used the expression 'case system,' but I do not like it, for it suggests a hide-bound and stereotyped mode of instruction. Nothing can be further from the truth. No scheme of teaching affords a greater scope for individuality. To Professor Langdell belongs the credit of introducing the method at Cambridge; but the styles of teaching of the different professors are as unlike as possible. We agree only in making cases, not text-books, the basis of instruction. . . .

"And I am far from thinking that the method of case study as practised at Cambridge is the final word on legal education. The improvement in the art of education in the last quarter of a century has been great. I do not believe that improvement has come to an end.

[1] 22 Amer. L. R. 756.

All that I contend is, that the method of study by cases is the best form of legal education that has yet been discovered.

"It is the best, because it is most in accordance with the constitution of the human mind; because the only way to learn how to do a thing is to do it. No man ever learned to dance or to swim by reading treatises upon saltation or natation. No man ever learned chemistry except by retort and crucible. No man ever learned mathematics without paper and pencil. . . .

"Although an important object of education is to tell the student what others have found out, a more important object is to teach him to find things for himself.

"The greatest teacher the world has ever known was fond of comparing himself to a midwife. His task, he said, was to aid the scholar to bring forth his own ideas. He, to-day, will be the most successful teacher who can best exercise this obstetrical function. And in law no better way has been devised to make the student work for himself than to give him a series of cases on a topic and compel him to discover the principles which they have settled and the process by which they have been evolved. A young man thus trained not only learns the common law, but is imbued with its historical and progressive spirit. . . .

"In the matter of exciting interest and fixing in the memory, the advantage is all on the side of the study of cases. To keep the attention fastened and every power of the mind awake when reading continuously a book so severely abstract as a treatise on law, is a very difficult task. To retain the contents in the memory is still more difficult. . . . The case gives form and substance to legal doctrine, it arrests the attention, it calls forth the reasoning powers, it implants in the memory the principles involved. . . .

"When from a case the student has gained a vivid sense of what the difficulties of a subject are, he will be eager to turn — and he will turn with profit — to find out what able and learned jurists have said on them, and to classify and systematize his knowledge. Their words will fall on a prepared soil, and will stay in his memory. But to begin with text-books is to begin at the wrong end."

A RECENT decision by Judge Jackson, of the United States Circuit Court, at Louisville, Ky.,[1] has an important bearing on the powers of the Interstate Commerce Commission. A controversy between the Kentucky & Indiana Bridge Company and the Louisville & Nashville Railroad had been brought before the Commission, who decided in favor of the Bridge Company. The railroad refused to obey the orders of the Commission, and the Bridge Company applied to the court to enforce the order. After a hearing, the court refused to follow the recommendation of the Commission, or to enforce their order against the Railroad Company. The court, in so deciding, held that, the Commission being given no power to enforce their decrees and being obliged to apply to the United States Circuit Courts for that purpose, their decisions have no final or binding authority; they are only in the nature of reports of a referee, which leave all questions of law and fact open for the consideration of the Circuit Court as original questions, except in so far as the findings are *prima facie* evidence of what is therein contained.

The Interstate Commerce Act provides, in substance, that the Com-

[1] The Chicago Times, Jan. 8, 1889. [37 Fed. Rep. 567.]

mission shall have power to investigate cases arising under the act; that its findings shall be *prima facie* evidence in any subsequent judicial proceedings; that its recommendations may be enforced by petition, in a summary way, to the Circuit Courts of the United States; and that "if it be made to appear to such court . . . that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same." It will be seen that no specific provision is made for the case where the Circuit Court finds itself obliged to differ from the Commission, either as to matter of fact, or as to matter of law; and hence arises the importance of this decision. An appeal has been allowed to the Supreme Court of the United States.

THE first prize offered last winter by the Medico-Legal Society of New York for the best essay on a medico-legal subject, has been awarded to one of the original editors of this REVIEW, Mr. J. H. Wigmore, L.S. '87, the subject of whose article was "Circumstantial Evidence in Poisoning Cases." Among the members of the awarding committee were ex-Judge Dillon and ex-Judge Noah Davis.

The article, which was printed in full in the "New York Mail and Express," Dec. 17, 1888, is an analysis, based upon a historical review of adjudged cases of the amount and kind of evidence necessary to sustain an indictment for murder by poisoning. These propositions must be established to sustain such an indictment: —

First, it must be proved that the deceased died by poison. This may be shown by one of two kinds of circumstantial evidence; either (*a*) by an analysis of portions of the body or of substance known to have entered the body, or (*b*) by the observed symptoms and appearances before and after death.

Second, it must be proved that the poison was administered by the accused or by his agency. Direct evidence of this fact being rarely obtainable, circumstantial evidence must generally be relied upon. This circumstantial evidence consists of a group of four subsidiary facts, from which the existence of the principal fact — the defendant's guilt — is to be inferred: (*a*) previous possession of the poisonous substance; (*b*) opportunity of administration; (*c*) antecedent possibility or probability, including motive and expressed intention; and (*d*) impossibility or improbability of administration by other agencies.

Third, it must be shown that the accused administered the poison with knowledge of its probable effects.

The outlines of this summary are filled out in Mr. Wigmore's article by an interesting and instructive discussion of the varying importance to be attached to each of these different items of evidence, the probative force of each, and the roles played by each in the various adjudged cases of the past.

"THE good old English law," as Charles Kingsley somewhere calls it, that every Englishman has a right to attend church, for it is God's house, has lately received judicial recognition.

A reformatory boy being prevented by the church-warden from entering the church, and having brought action for the assault, it was

held that he had a right to attend service, and that the assault was without justification (*Taylor* v. *Timson*, 20 Q. B. D. 671).

This right, Stephen, J., traces to the statutes of 5 and 6 Edw. VI., which enacted that "all and every person and persons inhabiting within this realm . . . shall diligently and faithfully . . . endeavor themselves to resort to their parish church." Repealed under Mary, reënacted under Elizabeth, and modified in various ways by the Toleration Act and by Victorian legislation, these statutes are still a part of the English law to this extent, that "any person, be he whom he may, who is not a dissenter from the Church of England, is liable to ecclesiastical censure if he does not go to church;" and this would really operate as a fine, for the person censured would have to pay the costs.

It was suggested that there were over eleven hundred people in the district chapelry, exclusive of the boys in the reformatory, and that the church would accommodate only about three hundred. To this argument drawn from overcrowding, the learned justice rather slyly remarks: "The Church of England has got on very well for a long time without deciding that question, and will probably get on very well in the future."

One of the early cases cited showed that formerly a private seat in a church was regarded as a nuisance, and that, when no prescriptive right existed, any one might carry the seat away; for "it is not reasonable that one should have his seat and that two shall stand, for no place belongs more to one than another."

MINISTER PHELPS, in an address delivered before the Glasgow Juridical Society, Nov. 15, 1888, is reported to have made the following remarks on lawyers as speech-makers:[1] —

"Time was when the lawyers were esteemed to be preëminently the speech-makers. But they have been in latter days so far surpassed in that accomplishment by other classes in society, that they are no longer entitled to this questionable distinction. Lawyers are not much addicted to gratuitous oratory. They are seldom heard from until they are retained; nor then, unless there is an issue formed which it is necessary to discuss. Their arguments must be confined to the matter in hand, and must cease when the discussion is exhausted or the question determined. They do not enjoy the latitude allowed to the lawyer described by the Roman satirist, whose client was heard complaining 'that his lawsuit concerned three little kids, while his advocate, in large disdain of these, was thundering in the Forum over the perjuries of Hannibal and the slaughter of Cannæ.' The limits of forensic discourse are grave impediments to the cultivation of eloquence, which, in its modern state, needs to be unembarrassed by facts, unrestrained by occasion, and unlimited by time. So the bar has fallen into what might be called, in comparison with discussions elsewhere, a measurable silence."

MISPRINTS.—The following errors occurred in our November number: The omission of the word "that" between the words "policy" and "cannot," line 10, p. 184; the use of word "cannot" instead of "can" in line 6 of the case on Common Carriers, p. 187; and the citing of the case on Imputed Negligence of *Bisaillon* v. *Blood*, p. 190, as in 13 Atl. Rep., instead of 15 Atl. Rep.

[1] 38 Alb. L. J. 466.